

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 W. A. DREW EDMONDSON, in)
4 his capacity as ATTORNEY)
5 GENERAL OF THE STATE OF)
6 OKLAHOMA and OKLAHOMA)
7 SECRETARY OF THE ENVIRONMENT)
8 C. MILES TOLBERT, in his)
9 capacity as the TRUSTEE FOR)
10 NATURAL RESOURCES FOR THE)
11 STATE OF OKLAHOMA,)

12 Plaintiffs,)

13 vs.)

No. 05-CV-00329-GKF-PJC

14 TYSON FOODS, INC., et al.,)

15 Defendants.)

16 VIDEOTAPED DEPOSITION OF GAREY FOX, Ph.D.,

17 before the undersigned Certified Shorthand Reporter,
18 taken on behalf of Defendant Cal-Maine Foods, at 717
19 East Hall of Fame Avenue, Stillwater, Oklahoma,
20 commencing at 9:35 a.m., on April 9, 2009, pursuant to
21 the stipulations of the parties.

22 D. CHERI MAYS, RPR, CSR #1729

23 NICHOLS McCLANAHAN REPORTING
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EXHIBIT

95

GAREY FOX, Ph.D. 04/09/09

1 Q. Also, if I ask a question that is confusing
2 to you in any way -- and since we may get into some
3 technical areas, the probability of that goes up
4 probably exponentially -- will you please let me know
5 that my question is confusing to you?

6 A. Yes, I will.

7 Q. May I assume that if you don't let me know
8 that the question is confusing, that you, in fact,
9 understand the question?

10 A. Yes.

11 Q. Okay. Thank you.

12 Sir, what is your current business address?

13 A. 120 Agricultural Hall. And that would be
14 Oklahoma State University, Stillwater, Oklahoma,
15 74078.

16 Q. And what is your telephone number there,
17 sir?

18 A. It's (405) 744-8423.

19 Q. And where do you live, sir?

20 A. I live in Stillwater.

21 Q. What is your current job, occupation, or
22 profession?

23 A. I am an assistant professor, teaching and
24 research appointment in the Department of Biosystems
25 and Agricultural Engineering at Oklahoma State

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1 University.

2 (Deposition Exhibit No. 1 was identified.)

3 Q. (By Mr. Redemann) Sir, I'd like to hand you
4 what I've marked as Exhibit 1 and ask you if you have
5 seen that before.

6 MR. REDEMANN: And for the record and those
7 on the phone, it's a photocopy of the notice of video
8 deposition.

9 A. I have seen something with similar writing,
10 but not exactly this form.

11 (Deposition Exhibit No. 2 was identified.)

12 Q. (By Mr. Redemann) Okay. Thank you.

13 Sir, I'm going to hand you what's been marked as
14 Deposition Exhibit No. 2 and ask you if you have seen
15 that document before, or a copy of that document.

16 MR. NANCE: That one is yours. It's still
17 got the check on it.

18 A. I have seen pages 1 and 3 but not page 2 of
19 this document, of this Exhibit 2.

20 Q. (By Mr. Redemann) Okay. And what do you
21 understand Exhibit 2 to be, or the pages that you've
22 seen?

23 A. A subpoena for my expert witness testimony
24 for a deposition on today's date.

25 Q. Okay.

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1 A. That is correct.

2 Q. Okay. And is the third bullet, which says,
3 "Subsurface transport considered negligible" -- would
4 that have been the conventional wisdom, again, before
5 you did your work?

6 A. That is correct.

7 Q. Okay. The fourth bullet says, "Ozark
8 region of northeast Oklahoma especially sensitive."
9 Why would it be especially sensitive?

10 A. It's -- it's sensitive in northeast
11 Oklahoma because of the gravel subsoils that exist.

12 Q. Okay.

13 A. And those subsoils have the potential to --
14 to rapidly transmit water and, from our trench test
15 results, nutrients of phosphorous through the
16 subsoil.

17 MR. NANCE: Okay. I don't think I have any
18 other questions.

19 REDIRECT EXAMINATION

20 BY MR. REDEMANN:

21 Q. Doctor, would the fact that there are
22 preferential pathways -- would it be true that other
23 substances could also be transported in the
24 preferential pathways, not just nutrients?

25 A. That would be correct.